

Editor's note: appealed - aff'd sub nom. Engle v. Watt, Civ.No. 81-0280 (D.Wyo. Feb. 3, 1982), aff'd in part, rev'd in part, No. 82-1440 (10th Cir. Nov. 7, 1983), 721 F.2d 694 cert. denied, 104 S.Ct. 2347 466 US 972 (May 14, 1984)

RESOURCE SERVICE CO., INC.
GRACE K. GRECO

IBLA 80-796

80-820

Decided June 26, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease offer W 62757.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases:
Applications: Sole Party in Interest -- Oil and Gas Leases:
First-Qualified Applicant

When an individual files an oil and gas lease offer through a leasing service under an agreement whereby the leasing service is authorized to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by the offeror; where the offeror is required to pay the leasing service according to a set schedule, even if the offeror negotiates the sale; and where such agency to negotiate is to be valid for 5 years, the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. Such an agreement creates for the leasing service an "interest" in the lease as that term is defined in 43 CFR 3100.0-5(b).

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Sole Party in Interest -- Oil and Gas Leases: First-Qualified Applicant

Where an individual files an oil and gas lease offer through a leasing service under an agreement with the service which has been determined to create an interest in the lease for the service, and the service files a "waiver" of that interest with the BLM prior to a simultaneous drawing, without communicating such "waiver" to the client, and without any contractual consideration running from the client to the leasing service, the "waiver" is without effect as a matter of law and both the successful drawee and the leasing service are required to make a showing as to their respective interest under 43 CFR 3102.7.

3. Equitable Adjudication: Generally -- Estoppel -- Federal Employees and Officers: Authority to Bind Government -- Oil and Gas Leases: Applications: Generally

The Department is not estopped from rejecting an oil and gas lease offer because the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that the BLM state office employees are subordinate personnel and that their decisions are subject to reversal on review at the Secretarial level.

APPEARANCES: Grace K. Greco, pro se; Thomas W. Ehrmann, Esq., and David B. Kern, Esq., Milwaukee, Wisconsin, for Resource Service Company, Inc.; Harold J. Baer, Jr., Esq., Office of the Regional Solicitor, U.S. Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Resource Service Company, Inc. (RSC), and its customer, Grace K. Greco, 1/ have appealed from the July 10, 1980, decision of the Wyoming

1/ Resource Service Company, Inc., and Grace K. Greco each filed a notice of appeal from the July 10, 1980, decision. The notices of appeal were transmitted to the Board at different times resulting in the issuance of two docket numbers on appeal. As only one BLM decision is involved, the appeals are consolidated.

State Office, Bureau of Land Management (BLM), rejecting Greco's simultaneously filed offer for oil and gas lease W 62757. The offer was rejected because the State Office had determined that RSC had an interest in Greco's offer which was not disclosed at the time the offer was filed.

On January 10, 1977, Greco signed an agreement with RSC to participate in the simultaneous drawings for oil and gas leases sponsored by BLM. This agreement authorized RSC to act as the sole and exclusive agent to negotiate for sublease, assignment, or sale of any rights obtained by Greco. The agreement obligated her to pay the leasing service according to a set schedule, even if she negotiated the sale of the lease. The agreement further provided that the agency to negotiate would be valid for 5 years.

On January 13, 1977, Fred Engle, d.b.a. Resource Service Company, Inc., executed a document styled "amendment and disclaimer" which purported to waive RSC's interest under service agreements such as the one signed by appellant. This amendment and disclaimer was sent to BLM, but not to Greco.

Greco's card was drawn first for parcel No. WY 162 in the February 1978 drawings. After RSC notified her that she had won, she signed a new sales agreement, dated February 20, 1978. As noted above, however, BLM rejected appellant's offer, holding that RSC had an undisclosed interest in the lease and that RSC's disclaimer of that interest was ineffective. We affirm.

[1, 2] In Donald W. Coyer, 50 IBLA 306 (1980), aff'd, Coyer v. Andrus, Nos. C78-104K, C80-370K, C80-372K (D. Wyo. filed Mar. 5, 1981), appeal docketed, No. 81-1415 (10th Cir. Apr. 6, 1981), we held that this same agreement between RSC and its clients gives RSC an interest in an oil and gas lease offer as defined by 43 CFR 3100.0-5(b), because the leasing service has an enforceable right to share in the proceeds of any sale of the lease or any interest therein, and in any payments of overriding royalties retained. In that case, we further held that Engle's attempt to waive this interest was without effect because the purported "waiver" was filed only with BLM without communicating such waiver to the client and without any contractual consideration running from the client to the leasing service. A court recently reviewed de novo our determination that Engle's disclaimer was without effect and reached the same conclusion because the disclaimer was neither under seal nor supported by consideration. Lowey v. Watt, Civ. Nos. 79-3314 through 79-3319 (D.D.C. May 29, 1981), aff'g Frederick W. Lowey, 40 IBLA 381 (1979). Because RSC had an interest in the offer at the time it was filed, and because it was not disclosed at that time, the offer must be rejected. RSC's argument to the contrary is fully discussed in the Coyer decision and in other recent decisions by this Board involving the same or similar facts. E.g., Wilbur G. Desens, 54 IBLA 271 (1981); Inexco Oil Co., 54 IBLA 260 (1981); Home Petroleum Corp., 54 IBLA 194, 88 I.D. 479 (1981).

[3] RSC further argues that the doctrine of equitable estoppel precludes the Department from holding the waiver ineffective because

two BLM employees had advised Engle that the waiver would be sufficient. In Coyer and in the other cases cited above, we expressly rejected this contention. We held that the Department is not estopped from rejecting an oil and gas lease offer, although the offeror allegedly relied on the acceptance by employees in a BLM state office of a plan designed by the offeror to remove a fatal defect in the offer, where the offeror had both constructive and actual knowledge that BLM state office employees are subordinate personnel and that their decisions are subject to reversal upon review at the Secretarial level. Wilbur G. Desens, supra; Inexco Oil Co., supra; Home Petroleum Corp., supra; Donald W. Coyer, supra. The fact that BLM continued to process offers filed by RSC does not constitute approval of RSC's service agreement.

In Lowey v. Watt, supra at 11-12, the court rejected RSC's estoppel arguments:

Modern authorities indicate that estoppel may be invoked where (1) the traditional requirements are met, and (2) the government's actions constitute "affirmative misconduct." United States v. Ruby Co., 588 F.2d 697 (9th Cir. 1978), cert. denied, 442 U.S. 917 (1979); Santiago v. Immigration & Naturalization Service, 526 F.2d 488 (9th Cir. 1975), cert. denied, 425 U.S. 971 (1976). Cf. United States Immigration & Naturalization Service v. Hibi, 414 U.S. 5, 8 (1973) (implying that affirmative misconduct might give rise to estoppel against the government). The BLM officials' actions do not approach the requisite level of "affirmative misconduct." Although the officials erred in agreeing to accept RSC's disclaimer, they did so at RSC's request and to protect RSC's clients until RSC could put a revised service agreement into effect. Further, it would be a misstatement to assert that RSC is without blame. It had notice as early as December of 1976 that its exclusive agency provision was improper and was in clear violation of the regulations, yet it refused to change its service agreement for fifteen months. RSC could have entered new service agreements with its existing clients but declined to do so. Plaintiffs have no entitlement to the leases for which they submitted offers, but a mere hope or expectation. Schraier v. Hickel, 419 F.2d 663, 666 (D.C.Cir. 1969); McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973); aff'd, 494 F.2d 1156 (D.C.Cir. 1974). Against these considerations we must balance the public interest in fair administration of the noncompetitive lease program. All offerors are entitled to assurance that the government will impartially enforce its regulations. Plaintiffs' claim of governmental estoppel is without merit. [Footnotes omitted.]

Greco claims that RSC had been filing offers on her behalf for about a year before the subject offer was drawn and that she was given

no indication by RSC or BLM that the terms of RSC's service agreement rendered the offers unqualified. She feels that she should have been notified after her card was drawn that continued association with RSC would jeopardize her lease. No such notification after the drawing would have affected the result of this appeal, however, because defects in a simultaneously filed offer cannot be subsequently cured. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

